

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jayvee Rhoda	Team: Squad #10	CCRB Case #: 201601677	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/25/2016 7:46 PM	Location of Incident: § 87(2)(b)	Precinct: 88	18 Mo. SOL 8/25/2017	EO SOL 8/25/2017	
Date/Time CV Reported Fri, 02/26/2016 12:30 AM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 03/02/2016 8:35 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Carlos Miranda	25050	941102	088 PCT
2. SGT Dany Fana	00733	944547	088 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Desmond John	14309	940307	088 PCT
2. POM Stephen Leuzze	11318	942057	088 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Dany Fana	Abuse: Sergeant Dany Fana stopped the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
B.POM Carlos Miranda	Abuse: Police Officer Carlos Miranda stopped the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
C.POM Carlos Miranda	Abuse: Police Officer Carlos Miranda damaged § 87(2)(b)'s property.	§ 87(2)(b)

Case Summary

On February 25, 2016, at approximately 7:46 p.m., § 87(2)(b) was sitting in his vehicle, which was parked in front of § 87(2)(b), in Brooklyn. § 87(2)(b) was putting his coat on and preparing to exit his vehicle to meet with his cousin, who lives at § 87(2)(b). While he was doing this, Sgt. Dany Fana and PO Carlos Miranda from the 88th Precinct pulled up in front of § 87(2)(b) in a marked RMP. Sgt. Fana and PO Miranda exited their RMP, approached § 87(2)(b)'s vehicle, and stopped § 87(2)(b) (**Allegations A and B**). The officers told § 87(2)(b) that they smelled marijuana in his vehicle, and § 87(2)(b) informed the officers that he did have marijuana in his vehicle. The officers asked § 87(2)(b) to step out of his vehicle and PO Miranda recovered a black plastic bag from underneath the driver's seat, which contained marijuana. § 87(2)(b) was arrested and charged with § 87(2)(b). When § 87(2)(b) was released, he returned to his vehicle and discovered that the glove box compartment door was damaged, allegedly resulting from PO Miranda's search of the vehicle (**Allegation C**). There was no video footage available for this incident.

Mediation, Civil, and Criminal Histories

§ 87(2)(b) rejected mediation. On May 6, 2016, the NYC Comptroller's Office confirmed that § 87(2)(b) did not file a notice of claim in connection with this incident (See Board Review 12). § 87(2)(b)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer Histories

- This is § 87(2)(b)'s first CCRB complaint (See Board Review 2).
- Sgt. Fana has been a member of the service for eight years and has been the subject in 14 prior CCRB complaints filed against him involving 34 allegations. There is only one allegation that has been substantiated against Sgt. Fana. In case number 200906896, a stop of person allegation was substantiated and the Board recommended charges. The NYPD eventually issued instructions to Sgt. Fana. § 87(2)(g)
- PO Miranda has been a member of the service for 10 years and has been the subject in two prior CCRB complaints filed against him involving four allegations. There are no substantiated allegations against PO Miranda. § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officer Identification

Sgt. Fana and PO Miranda acknowledged interacting with § 87(2)(b). PO Miranda was confirmed to be § 87(2)(b)'s arresting officer.

Allegations Not Pleaded

Vehicle Search: § 87(2)(b) stated that officers searched his vehicle after he admitted to having marijuana and was placed under arrest. § 87(2)(g)

Recommendations

Allegation A- Abuse of Authority: Sergeant Dany Fana stopped the vehicle in which

§ 87(2)(b) was an occupant.

Allegation B- Abuse of Authority: Police Officer Carlos Miranda stopped the vehicle in which § 87(2)(b) was an occupant.

It is not in dispute that Sgt. Fana and PO Miranda stopped § 87(2)(b)'s vehicle. § 87(2)(g)

§ 87(2)(b) testified that he was sitting in the driver's seat of his vehicle with the engine off, putting his coat on to get ready to visit his cousin. Sgt. Fana and PO Miranda, who were in a marked police vehicle, pulled up in front of § 87(2)(b)'s vehicle. The officers exited their vehicle and approached § 87(2)(b). § 87(2)(b) turned his vehicle on so that he could roll his window down to speak with the officers. Sgt. Fana accused § 87(2)(b) of loitering, but § 87(2)(b) replied that he had just parked his vehicle and was getting ready to leave. Sgt. Fana asked § 87(2)(b) for his license, which he provided. Sgt. Fana gave § 87(2)(b)'s license to PO Miranda, who ran a check on § 87(2)(b) that came back negative. Sgt. Fana mentioned that they were in a high-crime area and that some shootings had occurred in the area. Sgt. Fana asked § 87(2)(b) to step out of his vehicle, and he complied. Sgt. Fana did not explain why § 87(2)(b) had to step out. Sgt. Fana stated that he smelled marijuana coming from inside § 87(2)(b)'s vehicle. § 87(2)(b) replied that he had some marijuana in his vehicle that he intended to take home for private use. § 87(2)(b) had an ounce of marijuana that was wrapped tightly in plastic approximately four to five times. The marijuana was in a compartment on his dashboard. § 87(2)(b) stated that this was the only marijuana that was in his vehicle. Sgt. Fana asked § 87(2)(b) to retrieve the marijuana. When § 87(2)(b) took the marijuana out of the dashboard, PO Miranda asked him to place it on the driver's seat. § 87(2)(b) accidentally dropped the marijuana on the floor of his vehicle and when he reached down to get it, PO Miranda told § 87(2)(b) to stop and get out of his vehicle because he was making too many movements. § 87(2)(b) complied and he was handcuffed by Sgt. Fana, who told him that he was arrested for marijuana possession. § 87(2)(b) was transported to the 88th Precinct stationhouse, where he was released with a DAT for § 87(2)(b) (See Board Review 3).

Sgt. Fana testified that he was conducting routine patrol with PO Miranda when they passed by § 87(2)(b)'s vehicle and smelled a strong odor of marijuana. They circled around the location and continued to observe § 87(2)(b)'s vehicle. Sgt. Fana stated that as conditions officers, he and PO Miranda were tasked with patrolling the area where the incident occurred because it is a high-crime area with a pattern of drug-related and violent crimes. Sgt. Fana also observed that § 87(2)(b) was idling his vehicle for more than a minute. Sgt. Fana stated that in NYC, it is illegal to be in a stationary vehicle with the engine on for more than a minute when there is a school nearby. Sgt. Fana noted that there is a school located near § 87(2)(b)'s vehicle. Sgt. Fana knew that § 87(2)(b)'s engine was on because his vehicle lights were turned on and there was smoke coming out of the exhaust pipe. Sgt. Fana and PO Miranda decided to stop their RMP and approach § 87(2)(b) on foot to conduct an investigation into the smell of marijuana. As they approached § 87(2)(b)'s vehicle,

the smell of marijuana became much stronger. Sgt. Fana told § 87(2)(b) that he smelled marijuana from his vehicle, and § 87(2)(b) admitted to the officers that he did have marijuana. § 87(2)(b) was instructed to step out of his vehicle and he complied. Sgt. Fana observed that there was a black plastic bag, in plain view, protruding from underneath the driver's seat. PO Miranda retrieved the bag and discovered a quantity of marijuana inside. § 87(2)(b) was subsequently placed under arrest. Sgt. Fana called additional officers to the scene and PO Desmond John and PO Stephen Leuzzi arrived at the scene and transported § 87(2)(b) to the 88th Precinct stationhouse. Sgt. Fana did not search § 87(2)(b)'s vehicle; only PO Miranda did so (See Board Review 4).

§ 87(2)(g) PO Miranda smelled marijuana from § 87(2)(b)'s vehicle when he drove past it. PO Miranda stated that it is illegal in NYC to idle a vehicle for more than three minutes. PO Miranda stated that § 87(2)(b) had his engine on for more than three minutes; PO Miranda knew that § 87(2)(b)'s engine was on because he heard the noise of the engine. PO Miranda stated that the incident location is known for having a high volume of drug sales. PO Miranda has made marijuana arrests in the past at the location. § 87(2)(b) initially denied that he had marijuana, but he eventually confessed, saying, "Yeah, I got marijuana." Sgt. Fana asked § 87(2)(b) to surrender the marijuana and § 87(2)(b) began reaching around, but it appeared as if he did not know where it was located. Sgt. Fana told § 87(2)(b) to stop moving and ordered him to step out and he complied. PO Miranda observed a black plastic bag sticking out from underneath the driver's seat, in plain view. The bag smelled of marijuana. PO Miranda recovered the bag, opened it, and discovered seven large zip lock bags of marijuana. § 87(2)(b) was then handcuffed and placed under arrest. § 87(2)(b) told the officers that the marijuana was for his personal use. PO Miranda also opened the glove compartment and found another black plastic bag containing three large zip lock bags of marijuana. In total, 2.5 ounces of marijuana were recovered from § 87(2)(b)'s vehicle. PO Miranda drove § 87(2)(b)'s vehicle back to the stationhouse for safekeeping and performed an inventory search of the vehicle (See Board Review 5).

§ 87(2)(b)'s arrest report noted that § 87(2)(b) was idling in his vehicle with the ignition on for more than three minutes and a strong odor of marijuana was emanating from his vehicle. The report also notes that § 87(2)(b) admitted to having marijuana in his vehicle (See Board Review 6).

PO John (See Board Review 7) and PO Leuzzi (See Board Review 8) arrived at the scene after § 87(2)(b) was stopped and placed under arrest, and were only there to transport him to the stationhouse for arrest processing.

The property voucher notes that seven zip lock bags of marijuana were recovered from a black plastic bag that was underneath the driver's seat. In addition, three large zip lock bags of marijuana were recovered from the glove compartment of § 87(2)(b)'s vehicle (See Board Review 9).

The New York City Administrative Code, Title 24, Section 24-163 states that idling a motor vehicle with the engine on for more than three minutes while parking, standing, or stopping is prohibited. Furthermore, the legal idling time is reduced from three minutes to one minute when the vehicle is adjacent to a public or private school facility (See Board Review 10).

A search of Google Maps revealed that the § 87(2)(b) school is directly adjacent to the parking lot where § 87(2)(b)'s vehicle was parked (See Board Review 11).

§ 87(2)(g)

Allegation C- Abuse of Authority: Police Officer Carlos Miranda damaged § 87(2)(b)'s property.

It is not in dispute that PO Miranda searched § 87(2)(b)'s vehicle incident to a lawful arrest. § 87(2)(b)

§ 87(2)(b) testified that after he was handcuffed and placed in PO John's and PO Leuzze's RMP, he saw PO Miranda leaning inside his vehicle through the driver's side and reaching towards the front passenger side area. § 87(2)(b) was unable to see which specific parts of the vehicle PO Miranda was searching and he did not see PO Miranda search the glove compartment. When § 87(2)(b) was released from the 88th Precinct stationhouse, his vehicle was returned to him. § 87(2)(b) observed that the glove compartment door of his vehicle was broken and hanging down, off the hinges. § 87(2)(b) did not see how this damage was sustained, but he assumed that it was caused by PO Miranda, who was seen searching the front passenger side area at the scene of his arrest. This was the only part of his vehicle that was damaged during the incident. § 87(2)(b) had not repaired the damaged glove compartment at the time of his CCRB interview and he did not have any official documentation of the alleged damage (See Board Review 3).

§ 87(2)(b) provided a photograph of the alleged damage to the CCRB. However, the photograph does not depict any visible damage to the glove compartment, only miscellaneous personal items scattered throughout the floor and front passenger seat of the vehicle (See Board Review 13).

PO Miranda testified that he opened the glove compartment during the vehicle search following § 87(2)(b)'s arrest, and discovered a black plastic bag containing three large zip lock bags of marijuana. PO Miranda denied damaging the glove compartment door or any part of § 87(2)(b)'s vehicle. PO Miranda was the only officer who searched § 87(2)(b)'s vehicle and he did not see any other officer cause the alleged property damage (See Board Review 5).

Sgt. Fana testified that he only recalled seeing PO Miranda retrieve the black plastic bag protruding from underneath the driver's seat. He did not see PO Miranda search the glove compartment of § 87(2)(b)'s vehicle at the scene of the arrest. PO Miranda told Sgt. Fana after the

incident that he searched the glove compartment and discovered a quantity of marijuana inside. Sgt. Fana was not aware as to whether § 87(2)(b)'s glove compartment was damaged during the incident and he did not observe any damage to § 87(2)(b)'s vehicle. Sgt. Fana did not search § 87(2)(b)'s vehicle, only PO Miranda searched it. Sgt. Fana denied damaging any part of § 87(2)(b)'s vehicle and he did not see any other officer do so (See Board Review 4).

PO John (See Board Review 7) testified that he did not see any officer search § 87(2)(b)'s vehicle and he did not see the alleged damage or any damage to § 87(2)(b)'s vehicle. PO Leuzze (See Board Review 8) also testified that he did not see the alleged damage or any officer cause damage to § 87(2)(b)'s vehicle.

§ 87(2)(g)

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Squad: 10

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date